IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.539 OF 2002

Shevanta Devram Bhagat ...Applicant
Vs.
Ramdas @ Rambhau Babn Walunj & Anr. ...Respondents

Shri. C.R.Sonawne for the Applicant.
Shri. R.Y.Mirza, A.P.P. for the Respondents.

CORAM : A. S. OKA, J.
DATED : AUGUST 04, 2005.

P.C.:

1. The Revision Application is filed by original complainant for challenging the order of acquittal. The Respondent No.1 was prosecuted for the offence punishable under sections 376 and 506 of the Indian Penal Code.

2. The learned Counsel appearing for the Applicant invited my attention to the medical certificate which shows that age of the prosecutrix on the relevant date may be less than sixteen years. He submitted that two important witnesses were not examined by the prosecution and therefore, this is a case where order of remand is required to be passed. He has placed reliance on the decision of the Apex Court reported in (2002) 7 Supreme Court Cases 450 (DILA and Anr. Vs. State of Uttar Pradesh).

3. I have considered the submissions. The medical certificate discloses that as on 13th November, 2000, the age of the prosecutrix was above fifteen years but, less than seventeen years including

the margin of error. The said opinion is based on clinical and radiological examination. In my view, it is unsafe to conclude on the basis of such opinion that on the date of the incident, the age of the prosecutrix was certainly less than sixteen years.

4. Turning to the facts of the case, it is to be noted here that till child was born to the prosecutrix, F.I.R. was not lodged. It appears that on 27th October, 2000 information was given to the police that someone has thrown newly born child and thereafter police started investigation. Complaint is filed on 30th October, 2000. The learned Judge has recorded a finding that the prosecutrix admitted that she disclosed the offence for the first time to her mother on 29th October, 2000 i.e. obviously, after delivery of the child. These are the factors which are considered by the learned Additional Sessions Judge, Pune while passing the order of acquittal. The scope of Revision Application against the order of acquittal is limited. If these are the findings of the fact recorded by the learned Judge, examination of two additional witnesses is not going to prove the case of the prosecution. There is no merit in the Application and the same is rejected.

JUDGE